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ORIGINAL

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November 13, 2002

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AZ CORP COMMISSION
DOCUMENT CONTROL

Mr. Chris Kempley
Director, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Arizona Corporation Commission

DOCKETED

NOV 14 2002

Re: ACC Docket No. E-01032C-00-0751

Subject: Possible Conflict of Interest

Dear Mr. Kempley:

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During last Thursday's telephonic conference on subject case, we discussed my Data Request Three concerning a possible conflict of interest. Administrative Law Judge Nodes pointed out that this issue is more properly addressed to your department.

I do not know this person. We have never communicated, nor do I have any complaints. However, does any conflict exist?

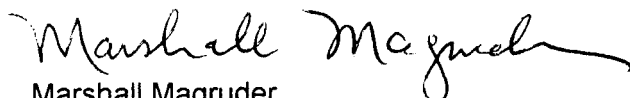
Upon review of both the ACC roles and responsibilities in Attachment A and the appropriate sections of the A.R.S., it appears that the "substantial" recuse argument from the Strike Motion and Reply to Response to Strike Motion might not be adequate.

As Attachment B shows, the individual involved was at a meeting that is the subject of this case. Portions of the 13,000 pages provided by a data request remain confidential. Your staff has access to these.

To completely clear up this matter, it seems an investigation may be justified that would review the 13,000 pages (a vast majority are non-relevant), in particular meeting notes and attendees, email subjects and addressees, and other links between the subject of this case and this individual. If substantially more than Attachment B is turned up which has the individual's name in what appears as a list of attendees, would it be appropriate to review the other 90,000 pages of confidential documents?

Thank you.

Sincerely,


Marshall Magruder
520.398.8587

Cc: Administrative Law Judge Dwight Nodes

Attachments:

- A Excerpt from Marshall Magruder Third Data Request, MM-3.17 (1) or (1) to (23)
- B Copy of Bates Number pages CCC017060 to CCC017061

Attachment A

Excerpt from Marshall Magruder Data Request MM-3.17 (1) or (1) to (23)

Possible Conflict of Interest (0201020 - Original)

3.17 The Citizens PPFAC Application was sent to the ACC on 28 September 2000. One of the addresses was a **Deborah R. Scott**, Director, Utilities Division, Arizona Corporation Commission. About 15 September 2002 I received four boxes containing about 13,000 pages in response a Mohave and Santa Cruz County Data Request. The shipping label was from "**Deb Scott**, Citizens Communications, 2901 North Central Avenue, Phoenix AZ 85012."

(1) Are these the same person? If so, then continue with additional data requests below. If not, then please delete the below.

CITIZENS RESPONSE/RATIONALE:

If these are the same person, then a conflict of interest might exist. In the position as Director of the Utilities Division, Ms. Scott has responsibilities for the Utility Division. These are summarized from the ACC web page as follows:

The Arizona Corporation Commission has jurisdiction over the quality of service and rates charged by public service utilities. By state law, public service utilities are regulated monopolies given the opportunity to earn a fair and reasonable return on their investments. What is fair and reasonable in any particular case has been and always will be open to debate in rate hearings before the Commission. Generally, the Commission tries to balance the customers' interest in affordable and reliable utility service with the utility's interest in earning a fair profit.

The **Utilities Division** makes specific recommendations to the Commissioners to assist them in reaching decisions regarding public utility rates, utility finance and quality of service. The Division is responsible for researching and developing utility issues, providing information and evidence in Commission proceedings dealing with utility applications, and monitoring the quality of utility service, and the rates approved by the Commissioners. Additionally, Division staff inspects gas pipelines for safety, operates a railroad safety program and maintains the official documents of proceedings before the Commission.

All rate changes require approval of the Commission in an Open Meeting. Staff preparation for a major rate hearing begins at the time of utility's initial filing, and takes approximately four to six months before the hearing takes place. Work efforts between the time of filing and hearing include a review of past Commission actions, a review of documents on file with the Commission, an audit of the books and records of the utility, discussions with utility personnel and other interested parties, formulation of the staff recommendation, an analysis of the impacts of the recommendation, and preparation of written testimony and schedules.

The ACC Utility Division "Mission Statement" is as follows:

To recommend thoroughly researched, sound regulatory policy and rate recommendations to the Commissioners, which are based on a balanced analysis of the benefits and impacts on all stakeholders and are consistent with the public interest.

The Citizens Communications 2001 Annual Report, states

Our Values.

In pursuit of our corporate mission, we will strive to:

Treat one another with respect

Be scrupulously ethical in all our dealings

Always take the initiative

Be an outstanding citizen in each of the communities we serve

Preserve and protect our environment

Take pride in our work and pleasure in what we do.

- (2) What were the employment dates for Ms. Scott at the ACC? If she was employed more than once, include all such employment dates.

CITIZENS RESPONSE/RATIONALE:

- (3) If Ms. Scott was a consultant or under contract to the ACC in any capacity, please provide these employment dates and task description statements.

CITIZENS RESPONSE/RATIONALE:

- (4) What was the position description for each position she held at the ACC? Please provide these position descriptions.

CITIZENS RESPONSE/RATIONALE:

- (5) What are the ethical and conflict of interest rules that pertain to these positions? Please provide current source documentation.

CITIZENS RESPONSE/RATIONALE:

- (6) What was the usual role Ms. Scott performed at the ACC, in particular, what were her specific duties and responsibilities for hearings, such as this PPFAC proceeding?

CITIZENS RESPONSE/RATIONALE:

- (7) Did Ms. Scott have knowledge of this PPFAC proceeding, by either direct means, such as signing records or documents associated with these issues, or indirectly, such as having access to a database which could contain the status of these proceedings? If she signed any documents, such as personnel work assignments, assessments, document reviews, attended meetings which included this case, or any other notes or diary, calendar or other record, please provide such documentation.

CITIZENS RESPONSE/RATIONALE:

- (8) What ethical training and accomplishment criteria were Ms. Scott required to achieve for her position as the Utility Division Director? Include the status and attainment towards any such training and accomplishment ethical goals met by Ms. Scott during her tenure at the ACC.

CITIZENS RESPONSE/RATIONALE:

- (9) Are there any statutes, rules, regulations, procedures or processes required by the State of Arizona or the ACC concerning conflict of interest? If so, please provide copy of such rules that pertain to all of the positions held by Ms. Scott at the ACC.

CITIZENS RESPONSE/RATIONALE:

- (10) Do any of these "rules" limit ex-ACC employees, either temporarily or participation-wise after leaving the ACC? If different, such rules pertain to various positions held by Ms. Scott, please so indicate. For example, as a retired regular naval officer, I had one, two, five and lifetime federal regulations that impacted my future employment opportunities with felony level sentences for violation.

CITIZENS RESPONSE/RATIONALE:

- (11) Did the ACC provide Ms. Scott with specific instructions concerning future employment limitations that maybe conflicting with her when she made know her intentions to seek other employment?

CITIZENS RESPONSE/RATIONALE:

- (12) What were the direct involvements of Ms. Scott with the ongoing hearings? Include any discussions, personnel assignment responsibilities, and management decisions that directly and indirectly impacted the ACC side of these hearings?

CITIZENS RESPONSE/RATIONALE:

- (13) Was Ms. Scott having meetings with Citizens concerning these hearings prior to her leaving the ACC? If so, please provide full accounting, records, notes, phone records, emails, and any other information concerning such events, even if only telephonically.

CITIZENS RESPONSE/RATIONALE:

- (14) What material or documentation was Ms. Scott permitted to remove from the ACC when she ended her employment?

CITIZENS RESPONSE/RATIONALE:

- (15) Was Ms. Scott required to sign any document not to disclose information obtained during her employment? If so, please provide a copy of such documentation.

CITIZENS RESPONSE/RATIONALE:

- (16) On what date did Citizens Communications first discuss possible employment with Ms. Scott?

CITIZENS RESPONSE/RATIONALE:

- (17) Did Citizens understand the ACC conflict of interest or ethical standards, as requested above, when such pre-employment discussions were ongoing?

CITIZENS RESPONSE/RATIONALE:

- (18) On what date did Ms. Scott agree to work for Citizens and when did her employment first begin?

CITIZENS RESPONSE/RATIONALE:

- (19) What are the statutes, rules, regulations, procedures or processes required for Citizens concerning conflict of interest?

CITIZENS RESPONSE/RATIONALE:

- (20) What are the positions held by Ms. Scott, including the position descriptions for each position, and when was each held?

- (21) What ethical training and accomplishment criteria were Ms. Scott required to achieve for her position at Citizens? Include the status and attainment towards any such training and accomplishment ethical goals met by Ms. Scott during her present tenure at Citizens.

CITIZENS RESPONSE/RATIONALE:

- (22) What are all of the Ms. Scott's duties and roles with respect to this PPFAC proceeding? Please describe how she is involved or not involved with this case to the level necessary to "prove" no conflict of interest, if that is the case.

CITIZENS RESPONSE/RATIONALE:

- (23) What are the expected consequences on these PPFAC proceedings if Ms. Scott is found to be in conflict of interest?

CITIZENS RESPONSE/RATIONALE:

RESPONSE (S) BY:

Attachment B

Copy of Bates Number pages CCC017060 to CCC017061

In-house attorney notes:

Craig Marks

CCC017060

7/19/99

Carl D.
Sean
Dan Mac
Deb

PPFAC 3.5

1. - Overcollect ~~4.1 MM~~
- What is trigger?
- File to give back
2. Also APS Reduction
- & Billing Adjustment - \$4.3 Million
3. Base Rate overcharge + 4.1 Million

- Net out 3.5 & 4.3 = -.8 Million

Turning to PPFAC
4.1 ~~MM~~ Margin

4. 69KV Issue

5 customers

2 remaining Cypress

McCulloch, Cypress
Hallett, Kibbey, Clark
Adwest

- PPFAC excluded by contract
- We started doing this for all customers
- Cypress & Hallett left
- K's terminate @ Jan 97 when Rate Case
- Have ^{still} not been part of PPFAC
- Helped our bottom line
- > 1.5 Mill.
- No adjustment in PPFAC since last rate case
- May be one or two other recent cases customers

CCC017061